In the High Court of Judicature at Madras

Dated: 19-12-2007

Coram:

The Honourable Mr.Justice S.J.MUKHOPADHAYA
and
The Honourable Ms.Justice K.SUGUNA

W.P.Nos.22703, 876 and 877 of 2003
& W.P.M.P.No.28071 of 2003 in W.P.No.22703 of 2003
& W.P.M.P.No.17166 of 2006 in W.P.No.877 of 2003

R.Ramavely Nadar (deceased)
1. Elephant G.Rajendran

(First Petitioner substituted in the place of the deceased-Petitioner as per the Order of Court dated 20.7.2007 in W.P.M.P.No.1621 of 2007 in W.P.No.22703 of 2003)

2. South India Coconut Growers Association (Registration No.133/1998), represented by its Secretary R.A.Sakthivelu

(Second Petitioner impleaded as per the Order of Court of dated 19-12-2007 in W.P.M.P.No.1384 of 2007 in W.P.No.22703 of 2003) .. Petitioners in W.P.No.22703 of 2003

vs.

1. Prohibition and Excise Department,
Rep. by its Secretary,
Government of Tamilnadu,
Secretariat, Chennai-9.

2. Home Secretary,
Government of Tamilnadu,
Secretariat, Chennai-9.

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3. Kongu Velalar Social Welfare Trust,
276/E, Lakshmi Complex,
Near Bus Stand,
Dharapuram-638 661,
Erode District,
rep. by its Secretary C.Kalidas

(Third respondent-impleaded as per
Order of Court dated 19-12-2007
in W.P.M.P.No.1430 of 2007 in
W.P.No.22703 of 2003)

.. Respondents in W.P.No.22703 of 2003

Sugarcane Growers and
Sakthi Sugars Shareholders Association,
158, Sathi Main Road,
Kavindappadi-638 455. .. Petitioner in WP.Nos.876 & 877 of 2003

vs.

The Secretary,
Department of Prohibition & Excise,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-600 009. .. Respondent in W.P.Nos.876 & 877 of 2003

Writ Petition No.22703 of 2003 (Public Interest Litigation) filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, as stated therein.

Writ Petition No.876 of 2003 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration, as stated therein.

Writ Petition No.877 of 2003 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, as stated therein.

For 1st petitioner in W.P.No.22703 of 2003 :
Mr.G.Rajendran, Petitioner-in-person

For 2nd petitioner in W.P.No.22703 of 2003 :
Mr.K.Doraisamy, Senior Counsel
for Mr.Muthumani Doraisami

For petitioner in W.P.Nos.876 & 877 of 2003 :
Ms.Chitra Narayanan

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For respondents 1 and 2 in W.P.No.22703 of 2003
and respondent in W.P.Nos.876 & 877 of 2003 :
Mr.K.Elango, Spl.G.P.

For respondent-3 in W.P.No.22703 of 2003 :
Mr.Silmabannan, Senior Counsel
for M/s.Silambannan Associates

Order

S.J.Mukhopadhaya,J

All these Writ Petitions relate to grant of privilege to sell "Toddy" and there being a 'prohibition' imposed by the respondent-State, the Writ Petitions have been preferred including the one as Public Interest Litigation.

2. In W.P.No.876 of 2003, the petitioner-Sugarcane Growers and Sakthi Sugars Shareholders Association (hereinafter referred to as the petitioner-Association) seeks for a Writ of Declaration that the policy of prohibition adopted by the respondent-Department of Prohibition and Excise, from tapping, processing, sale and consumption of Toddy, amongst all alcohol in exercise of its powers conferred under Sections 17-B and 54 of the Tamil Nadu Prohibition Act, 1937 (hereinafter referred to as '1937 Act') is irrational, illegal and ultra-vires the 1937 Act, Article 14 and other provisions of the Constitution of India.

3. In W.P.No.877 of 2003, the very same petitioner-Association has prayed for a direction to the respondent-Department of Prohibition and Excise, to permit tapping, processing, sale and consumption of Toddy in exercise of its powers conferred under Sections 17-B and 54 of the 1937 Act.

4. In Writ Petition No.22703 of 2003, purporting to be a "Public Interest Litigation", prayer has been made to direct the first respondent-Prohibition and Excise Department to grant exemption under Rule 34 of the Tamil Nadu Liquor (Retail Vending) Rules, 1989 for those items mentioned in Section 4(d) and (e) of 1937 Act, alleging that the prohibition is discriminatory, offending Articles 14, 19(g) and 21 of the Constitution of India, as permission to obtain licence and to sell such products, have been granted to other Indian Made Foreign Liquor (for short, "IMFL") products mentioned in Section 17-C(1)(a) and (b) of 1937 Act.

5. Under Section 4 of 1937 Act, prohibition of manufacture, traffic and consumption of certain liquor and intoxicating drugs, has been imposed, and Clauses (d) and (e) of Section 4 relate to "Toddy". Section 4 (d) and (e) reads as follows:

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"Section 4: Prohibition of the manufacture of, traffic in, and consumption of liquor and intoxicating drugs--(1) Whoever--

(d) taps any toddy-producing tree or permits or suffers to be tapped any toddy-producing tree belonging to him or in his possession; or

(e) draws toddy from any tree or permits or suffers toddy to be drawn from any tree belonging to him or in his possession."

6. According to the petitioner-Association, the aforesaid "prohibition" is arbitrary, unreasonable and irrational, as "Toddy" is 'potable liquor' such as IMFL, which is a class by itself and no intelligible differentia has been shown as to why one of potable liquors such as "Toddy" has been prohibited, while the other potable liquors including IMFL and "Neer or Padani", have been allowed to be manufactured and sold.

7. According to the petitioner-Association, its members who are farmers, cultivating coconut in the State of Tamil Nadu, had to seek for the removal of the prohibition of the process and sale of Toddy, imposed by the respondent-State, while simultaneously permitting the manufacture and sale of all other forms of potable liquors. According to them, consumption of Toddy is relatively harmless and in fact, it is considered by many health and medical experts as well as medical systems, to be of beneficial to human body, and it is a form of liquor which is obtained from tapping of coconut trees, and the residue obtained from such process is "neer" which is consumed as a juice and does not have any alcohol content. As "neer" grows older by hours, if the process of fermentation takes place on account of which, the juice acquires and alcohol content increases over hours and reaches its peak in a period of 24 hours. The "Toddy" which has alcohol content, varies between 6-10% as compared to alcohol content of 4-8% in IMFL, such as beer, 42.8% alcohol content in "Vodka", Rum or Whisky and 32.7% alcohol in Gin.

8. As could be seen from the above facts, according to the counsel for the petitioner-Association, the Toddy has a significantly lower content of alcohol when compared to IMFL products, which are permitted to be manufactured and sold in the State of Tamil Nadu.

9. Further case of the petitioners is that the industry of Toddy tapping is beneficial for the economic activity generated therefrom. In the State of Tamil Nadu alone, its is estimated that 10 to 12 lakh persons derive employment as Tappers, who could tap a maximum of 20 trees daily. Further, economic activity could also be generated on account of the transportation and retailing of Toddy.

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10. Learned counsel appearing for the petitioner-Association submitted that since the enactment of the 1937 Act, there had been prohibition on tapping and processing of Toddy in the State of Tamil Nadu, except for certain intervening periods. The prohibition was lifted in the State for the first time in 1971-72, but re-imposed in 1976 and in the early 1980's, prohibition was again removed except on Toddy, which continued till date. On the other hand, in the case of other liquors, such as IMFL, Beer etc., the State Government has promulgated various Rules under Section 54 of the 1937 Act, permitting manufacturing, stocking, distribution, sale and consumption. It is the further case of the petitioner-Association that State has promulgated the Tamil Nadu Brewery Rules, 1983 (for Beer), the Tamil Nadu Indian Made Foreign Spirits (Manufacture) Rules, 1981, the Tamil Nadu Distillery Rules, 1981, the Tamil Nadu Liquor (Licence and Permit) Rules, 1984 and the Tamil Nadu Liquor (Retail Vending) Rules, 1989 and in these Rules, provision has been made as to what terms and conditions should be complied with for issuance of permits and licence for manufacturing, selling, retailing and consuming IMFL and Beer only and no such step has been taken to frame Rules for allowing manufacturing, selling, retailing and consuming " Toddy ".

11. In the Public Interest Litigation (W.P.No.22703 of 2003), main submission was made that the Toddy is a poor man's liquor and prohibition of the same will affect the poor public in general.

12. Learned counsel appearing on behalf of the State while submitting that no case has been made out for lifting the prohibition of manufacture, sale and consumption of Toddy, highlighted the grounds for imposing prohibition and hence, requested to dismiss the Writ Petitions.

13. We have heard the submissions of learned counsel appearing for the parties and noticed the rival contentions and relevant Acts and Rules framed thereunder.

14. We have also allowed the impleaded parties in W.P.No.22703 of 2003 to put forth their case and similar arguments were advanced on their behalf.

15. Regulation, control and prohibition of manufacture, sale and consumption of intoxicating liquor and drugs in the State of Tamil Nadu, is governed by the 1937 Act (as amended from time to time). Under the 1937 Act, "Liquor" is defined under Section 3(9), which includes Toddy, arrack, spirits, Wine, etc. Section 3(9) reads as follows:

> "Section 3(9): "Liquor" includes toddy, arrack, spirits or wine (denatured spirits), spirits, wine, beer, and all liquid consisting of, or containing alcohol;

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16. "Neer or Padani" has been defined under Section 3(11-B) of the 1937 Act, which means "juice drawn from a coconut palmyra, date or any other kind of palm tree into receptacles treated so as to prevent any fermentation and not fermented". A distinction has been made in respect of such juice in the definition of "Toddy" in Section 19 of the 1937 Act, as is evident from the aforesaid provision, which reads as follows:

> "Section 3(19): "Toddy" means the fermented or unfermented juice drawn from a coconut, palmyrah, date or any other kind of palm tree."

17. There is a prohibition imposed for manufacture, traffic and consumption of liquor and intoxicating drugs under Section 4. Under Clauses (d) and (e) to Section 4, tapping of Toddy-producing tree is prohibited, as is evident from the provision quoted above.

18. Under Chapter III of 1937 Act, while "Exemption and Licences" have been prescribed, Section 19 relates to licence for tapping of sweet Toddy, (i.e. "Neer or Padani"), as is evident from the said provision, which is quoted hereunder:

> "Section 19: Licence for tapping of sweet toddy, etc.--Subject to the control of the State Government, the Collector or any officer empowered by him may issue--
>
> (a) licences for the tapping of any trees for neera or padani (substituted for the word "sweet toddy" by Tamil Nadu Act VIII of 1958) for consumption thereof without fermentation or for the manufacture of jaggery therefrom, or
>
> (b) permits for the possession, transport or sale of such neera or padani."

19. From the aforesaid provision, it would be evident that there is no bar for tapping of sweet Toddy ("Neer or Padani"), i.e. "juice drawn from a coconut, palmyra, date or any other kind of palm tree into receptacles treated so as to prevent any fermentation and not fermented", but no such permission has been allowed for tapping of Toddy, which is "fermented or unfermented juice drawn from a coconut, palmyrah, dae or any other kind of palm tree", and from the same juice, which is basically known as "Neer or Padani".

20. In the above background of the case, it cannot be stated that the coconut or other palm tree growers cannot generate funds by selling such juice, nor it can be pleaded that if it is allowed to be fermented, then it will generate more employment.

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21. A citizen has no fundamental right to trade or business in liquor as a privilege. The Supreme Court, in the case reported in 1995 (1) SCC 574 (Khoday Distilleries Ltd. vs. State of Karnataka) (paragraph 41), while noticing the earlier decisions, in which it was observed that, "There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants—its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. ...."

22. In the decision of the Supreme Court reported in 2007 (2) SCC 365, in Civil Appeal No.5300 of 2006, etc., by judgment dated 1.12.2006 (State of Kerala vs. Unni), the question relating to fermenting liquor, such as Toddy, Beer, Wines etc., fell for consideration and in the said case, the Supreme Court observed that it cannot be ruled out that there is possibility of fermented Toddy containing 'ethyl alcohol' of more 8.1%v.v. It was accepted that the fermentation was a "natural process" and in the said case, no scientific data was available on record, nor the State furnished any information as to how much time it requires for Toddy to become "fermented" which would contain more than 8.1% of "ethyl alcohol". Having noticed the definition of "Toddy", which does not limit the extent of "fermentation", the Supreme Court observed in that case that the "fermented Toddy" would come within the purview of definition of "Toddy". The Supreme Court in that case further observed that if by reason of the rule-making power, the State intended to impose a condition, the same was required to be reasonable one. The Supreme Court, having noticed that the "Toddy" ferments automatically after sun rise and if it is permitted to be sold within a time-frame after Toddy is tapped, reasonableness can be inferred; but at what point of time precisely "ethyl alcohol" content would exceed 8.1% in a Toddy, is not known.

23. The State of Tamil Nadu found that it is expedient as early as possible to bring a "Prohibition", except for medicinally, scientific, industrial or such like purposes, and the production, manufacture, possession, export, transport, sale, etc., of intoxicating liquors and drugs were prohibited under the 1937 Act.

24. Subsequently, the Rule known as Madras Neera or Padani Rules, 1939, were framed, for regulating/granting license, permission for tapping, manufacturing, selling, consuming, etc., the "Neera or Padani" only, and as noticed above, though "prohibition" with regard to Toddy was lifted for certain periods, subsequently, by the Amending Act, again, it was inserted and the prohibition was imposed.

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25. On behalf of the respondent-State, learned Special Government Pleader highlighted further facts and grounds for imposition of such prohibition of Toddy, namely that, the State of Tamil Nadu was the first State in India to introduce total prohibition; in August 1971, the Government decided to suspend the enforcement of "Prohibition Laws" till such time as the Central Government came forward to enforce "Prohibition" as 'National Policy' all over the Country; Ordinance was accordingly promulgated on 28th August, 1971, suspending the operation of provisions of the Tamil Nadu Prohibition Act from 30th August, 1971; the Ordinance was subsequently replaced by Legislation; Retail shops for sale of Toddy and arrack were auctioned; Retail Indian Made Foreign Spirits shops were licensed; after lapse of three years, the prohibition was re-introduced; Toddy shops were first closed on 30th August, 1973; arrack shops were then closed from 1st September, 1974; holders of permits were allowed to consume IMFL which was imported from other States and sold in licensed shops; Prohibition Policy was modified in May 1981, underwhich drinking of Toddy or arrack or liquor was permitted, subject to certain conditions; the foremost consideration which weighed with the Government to relax the Prohibition Law was to prevent the addicts from falling into the hold of the distillers and sellers of illicit liquor, thereby endangering their health and to mop up Revenue for the State, which otherwise went into the coffers of anti-social elements; the Prohibition Law was modified permitting consumption of arrack or Toddy or Indian Made Foreign Spirits on personal permit basis; concerted action was taken to track down distillers and sellers of illicit liquor and wipe out illicit liquor totally from the State; the arrack and Toddy are highly injurious to health of the consumers; the Toddy is having low alcohol strength and it is normally adulterated with some stupefying substance like Chloral Hydrate in order to enhance its inebriation; when Chloral Hydrate is dissolved in Toddy, it gets mixed up thoroughly and hence, it cannot be differentiated from genuine Toddy; the poor and the illiterate consumers cannot identify whether the Toddy is adulterated or not and since the adulterated Toddy gives higher intoxication, the consumers may like this adulterated stuff, which is very harmful to their health, even proving fatal; unlike in the case of Indian Made Foreign Spirits, where there is only six manufacturing units and the production could be closely watched and monitored, in the case of Toddy, every palm tree is like a manufacturing unit, and it is not possible to monitor the production under each and every Palmyrah tree; adulteration could be done at any point right from tapping to selling at the Toddy shop; as the alcohol in Toddy is a self-generated one, its strength is very low and hence, the sellers may add Rectified Spirit or illicit arrack to the Toddy in order to enhance the intoxicating effect, besides adding other stupefying agents like Chloral Hydrate and Datura (Atropine), etc; the State Government therefore took a Policy Decision to ban the manufacture, sale and consumption of arrack and Toddy from 1.1.1987; by the Tamil Nadu Prohibition (Second Amendment) Act, 1986, the Tamil Nadu Prohibition Act, 1937 was suitably amended to give effect to the decision that all the Toddy and arrack shops were closed on 31.12.1986; the tappers can tap

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"Neera" which can be sold as it is, without any conversion; this is being marketed through Palmyrah tree growers and tappers welfare Board and Khadi and Village Industries Board and that the Neera can also be used for manufacture of "palm gur" and many other associated products.

26. In view of the aforesaid specific and categoric stand taken by the respondent-State, we find that no case is made out to interfere with the "prohibition" for tapping, manufacturing, processing, selling, consuming, licensing, possessing, transporting, trafficking, etc., imposed by the State of Tamil Nadu in regard to the Toddy. There being no merits, the Writ Petitions are dismissed. However, there shall be no order as to costs. The Miscellaneous Petitions are closed.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Prohibition and Excise Department,
   Rep. by its Secretary,
   Government of Tamilnadu,
   Secretariat, Chennai-9.

2. Home Secretary,
   Government of Tamilnadu,
   Secretariat, Chennai-9.

+2 ccs to Ms.Chitra Narayanan, Advocate Sr.No.75751.

+1 cc to The Government Pleader Sr.No.75362.

+1 cc to Mr.G.Rajendran (Petitioner in Person) Sr.No.75566.

+1 cc to M/s.Muthumani Doraisamy, Advocate Sr.No.75655.

BS(CO)
DCP/11.1

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